

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA;  
DONALD TRUMP, in his official capacity as  
President of the United States of America,  
et al.,

Defendants.

NO. 2:18-cv-00939-MJP

STATES' OPPOSITION TO  
DEFENDANTS' MOTION TO  
RE-NOTE/NOTE ALL PENDING  
MOTIONS FOR THE SAME DATE  
AND CONSOLIDATE FOR ORAL  
ARGUMENT

NOTING DATE: JULY 20, 2018

## I. INTRODUCTION

The States urge the Court to deny Defendants’ request to re-note the hearing date on the States’ Motion for Expedited Discovery. Dkt. 15. For all of the reasons set out in that Motion, which is fully briefed and ready for the Court’s review, further delay will only exacerbate the ongoing harms Defendants’ practices inflict on the States and their residents. Defendants’ unrelated motion to dismiss or transfer (Dkt. 22) is properly noted as a fourth Friday motion, and the States will vigorously oppose that motion in due course. There is no legitimate basis to continue the States’ pending Motion in deference to the Defendants’ ill-conceived request to transfer this case elsewhere, stay it, or dismiss the lawsuit altogether.

## II. ARGUMENT

As explained in the States’ Motion for Expedited Discovery (Dkt. 15), time is of the essence because the States are challenging unconstitutional and harmful misconduct, but may lose access to key witnesses and evidence due to the immediate movement of separated parents and children across the nation and internationally. Defendants’ own rapidly changing policies and practices make them difficult to document as time passes. Delay will only prejudice the States.

Contrary to Defendants’ suggestion, the motions are not so interrelated that they must be heard together simply because Defendants’ primary basis for resisting discovery is that they would rather have the case transferred, stayed, or dismissed. Defendants cite no authority for their position that a motion to dismiss should be decided prior to a motion for expedited discovery, especially where—as here—the States seek discovery precisely to better understand the impact Defendants’ misconduct has had on the States. *See* Dkt. 23 at 3 (arguing that “States’ standing is relevant to the disposition of their motion for expedited discovery” and thus the motion

1 for expedited discovery “should not be considered before the court rules on standing.”). To the  
 2 contrary, the “good cause” test for expedited discovery does not overlap with standards governing  
 3 motions to dismiss. *See, e.g., Music Group Macao Commercial Offshore Limited*, 2014 WL  
 4 11010724 at \*2 (good cause exists where there is a danger responding party will not preserve  
 5 relevant information). Indeed, courts can and have allowed expedited discovery notwithstanding a  
 6 pending motion to dismiss. *OMG Fidelity, Inc. v. Sirius Tech., Inc.*, 239 F.R.D. 300, 304-05  
 7 (N.D.N.Y. 2006) (ordering pre-answer, pre-conference discovery during the pendency of motion  
 8 to dismiss).

9 Defendants’ assertion that allowing this case to proceed would somehow “interfere with  
 10 the orderly administration of the *Ms. L* class action, its injunction, and potentially risk inconsistent  
 11 adjudications and obligations tied to the same claims,” is equally misplaced. Dkt. 23 at 3. This  
 12 speculation is unwarranted, as the States have no interest in disrupting the reunification efforts  
 13 required by the *Ms. L* Order. More importantly, litigation in another judicial district that touches on  
 14 the same misconduct does not bar expedited discovery elsewhere, where the parties, claims, and  
 15 relief sought are different and broader. Indeed, even if they were identical, courts have and can  
 16 allowed parallel proceedings to go forward. *See New York v. Pruitt*, No. 18-cv-1030, 2018 WL  
 17 2411595, at \*4 (S.D.N.Y. May 29, 2018) (“[W]e should not automatically assume that it is better  
 18 for a nationwide issue to be decided by a single court,” because “[i]t is a bedrock principle of  
 19 our federal court system that the adjudication of novel and difficult issues of law is best served  
 20 by letting questions percolate among the lower federal courts”).<sup>1</sup>

---

21  
 22 <sup>1</sup> For example, District Courts for Western Washington, California, D.C., and Maryland issued preliminary  
 23 injunctions suspending the U.S.’s transgender military ban in whole or in part. *Karnoski v. Trump*, No. C17-1297-  
 24 MJP, 2017 WL 6311305 (W.D. Wash. Dec. 11, 2017); *Stockman v. Trump*, 2017 WL 9732572 (C.D. Cal. Dec. 22,  
 2017); *Doe 1 v. Trump*, 2017 WL 4873042 (D.D.C. Oct. 30, 2017); *Stone v. Trump*, 2017 WL 5589122 (D. Md.  
 Nov. 21, 2017). Likewise, courts in three consolidated actions issued overlapping injunctions halting the U.S.’s  
 termination or phase out of the Deferred Action for Childhood Arrivals (DACA) program. *Batalla Vidal v. Nielson*,

1 **III. CONCLUSION**

2 For all of these reasons, as well as those set out in their Motion for Expedited Discovery,  
3 the States respectfully request that the Court deny Defendants' Motion to Re-Note (Dkt. 23).

4 DATED this 13th day of July, 2018.

5 ROBERT W. FERGUSON  
6 Attorney General

7 /s/ Rebecca Glasgow

8 REBECCA GLASGOW, WSBA #32886

9 Deputy Solicitor General

10 NOAH G. PURCELL, WSBA #43492

11 Solicitor General

12 COLLEEN M. MELODY, WSBA #42275

13 Civil Rights Division Chief

14 LAURA K. CLINTON, WSBA #29846

15 MEGAN D. LIN, WSBA #53716

16 Assistant Attorneys General

17 Attorneys for Plaintiff State of Washington

18  
19  
20  
21  
22  
23  
24 

---

1:16-cv-04756 (E.D.N.Y.), Dkt. 208; *Regents of the University of California v. DHS*, No. 3:17-cv-05211 (N.D. Cal.), Dkt. 234; *NAACP v. Trump*, 1:17-cv-01907 (D.D.C.), Dkt. 23.

**DECLARATION OF SERVICE**

I hereby certify that on July 13, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will serve a copy of this document upon all counsel of record.

DATED this 13th day of July, 2018, at Olympia, Washington.

/s/ Rebecca Glasgow

REBECCA GLASGOW

Deputy Solicitor General